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The primary positive boycott has met with little opposition, but the secondary has been generally condemned in the United States both by the courts and by statutes.

Conspiracy is usually charged, and some courts hold that an act that is lawful for one to do is lawful for several to do together; some others say a boycott which injures business only, does not injure a property right, and should be legal. Yet the courts of only 5 or 6 states uphold secondary boycotts,—New York, Montana, California, Rhode Island, Maine, and Oklahoma. In 14 states various kinds of boycotts have been held illegal. In 25 states the highest courts have not passed on the legality of boycotts in labor disputes. Of these, 4 have statutes condemning boycotts, and the courts in 7 others hold trade boycotts accompanied by malice or threats illegal.

In England boycotts are not criminal if not accompanied by violence or some similar act, and since 1906 trade unions cannot be sued for damages at all. Persuading boycotts, without force or violence, are upheld in Germany. In Austria, Belgium, France, Holland and Italy there are statutes against intimidation which would probably be held to apply to boycotts accompanied by threats or violence.

Many efforts have been made and are being made to legalize, by statute, certain forms of boycotting in the United States, and Maryland and California, following England, have declared it is not indictable for two or more to do what it is lawful for one to do. Mr. Laidler believes there is a tendency toward legalization in this direction.

The third part of the book discusses the reasons for and against making the boycott legal,—finding it easier to give arguments in favor of instead of against, doing so; and believes that the primary, secondary, and compound boycott involving only a threat to injure business by a withdrawal of patronage or labor, without violence to person or property, should be made legal.

The work is excellent in detail, non-partisan as a rule,—with possibly a slight leaning toward the labor side,—and filled with lucid discussion and apt quotations from the authoritative literature of the subject, with proper citations. An appendix gives a most valuable summary and digest of the decisions of the Federal and State courts, with a table of cases and bibliography. The work is also well indexed. It is a valuable and timely work.

H. L. W.

FEDERAL INCORPORATION. CONSTITUTIONAL QUESTIONS INVOLVED. By Roland Carlisle Heisler, Gowen Memorial Fellow in the Law School of the University of Pennsylvania, 1910-12. University of Pennsylvania Law School Series No. 3. Boston. The Boston Book Co., 1913. pp. viii, 231.

This little book contains the fullest and best discussion of the many constitutional questions involved in the matter of Federal Incorporation, that has come to the attention of the reviewer. There are eight chapters: Nature of the Power Vested in Congress by the Commerce Clause; Incorpo-

ration under Powers other than that over Commerce; Methods of Obtaining Compulsory Federal Incorporation; State Legislation with Reference to State Corporations Engaged in Interstate Commerce; State Legislation with Reference to Federal Corporations Engaged in Interstate Commerce; Jurisdictions of Federal Courts over Suits by or against Federal Corporations; The Meaning of the Term "Commerce Among the Several States."

The conclusion arrived at by the discussion in the first two chapters is: "Congress, as an appropriate means of regulating commerce among the States, can incorporate not only railroad and bridge companies, but also trading companies. As an incidental right, a federal trading corporation could make intrastate sales. It could also be given the corporate power to produce, which could be exercised as a legal right in the District of Columbia and the Territories, and which could also be exercised within a state, if the laws of the state did not deny such right." The author takes issue with Mr. GARFIELD upon the Federal power to confer the right to produce within a State without its consent, and also denies the power of Congress to confer the *capacity* to produce on a Federal Corporation, except as the local legislature of the District of Columbia, or over the Territories.

In chapter three he concludes that a corporation could be incorporated by Congress under the taxing or post-office, or army power, but such corporation could carry out only such powers and would be limited to such purposes, and they would not justify a practical working incorporation act for corporations engaging in commerce.

To what extent the Federal government could compel Federal incorporation is treated in chapter four. Four methods have been suggested: (1) By excluding the products of State corporations from interstate commerce. The author concludes that both by reason and authority the "power to regulate commerce among the states" includes the power to prohibit such commerce, and shipments from one state into another are not "exports," nor "imports" within the provisions of §§ 9 and 10 of Art. I; but effectively to exclude the products of a state corporation they would have to be excluded from interstate commerce when purchased and owned by individuals, and to do this would be an arbitrary and unreasonable classification, and so violate the due process provision of the Fifth Amendment.

(2) By direct exclusion of State Corporations from interstate commerce. He believes this can be done under either the "entity," or "group" theory of corporate existence. "The state cannot grant to the entity the absolute right to engage in interstate commerce, because it is beyond the power of the state to make such a grant," for Congress has exclusive jurisdiction over interstate commerce—under the "group" theory. "The privileges conferred by the state can have no extraterritorial effect, but can be exercised as of right only within the limits of the state which granted them," and Congress can refuse to allow the extension of such privileges to enter state commerce.

(3) Taxation of interstate commerce transacted by state corporations,—this, while "much less desirable than the direct exclusion of state corporations from interstate commerce," he believes would be constitutional under

the *Veazie Bank*, (8 Wall. 533), *McCray*, (195 U. S. 27), and *Flint*, (220 U. S. 108), cases, notwithstanding Professor WARRE's article in 6 MICH. L. REV. 277.

(4) Exclusion of Mail Matter of State Corporations,—which he considers, probably, unconstitutional, as an arbitrary classification violating the due process provisions.

In chapters five and six Mr. HEISLER examines the powers of the states with reference to state and federal corporations engaged in interstate commerce, under the headings of Taxation, and Police regulations. His conclusions are: A state cannot tax the privilege of engaging in interstate commerce by either a State or a Federal Corporation; and a tax on gross receipts partly derived from interstate commerce is invalid, unless some proportional part of such is used only to determine the value of property within the state. A state can tax property either of a State or Federal Corporation which has a situs within the state, although it is employed in interstate commerce. The difficulty is in measuring the value. The author believes that, although under the *unit rule*, valuations determined by apportioning gross earnings, or property, or capital stock, or franchise, according to mileage or business done as in the *Adams Express Co.* case (165 U. S.) have been generally upheld, such valuations necessarily include an element of value arising from interstate commerce, and are therefore, or should be, unconstitutional in principle; and while the Supreme Court is not likely to overrule these cases in reference to State Corporations, it probably would not extend them to include Federal Corporations.

A state can tax the intrastate business of a State Corporation engaged in interstate commerce, provided, according to recent cases, such tax does not impose a burden on interstate commerce. The author apparently favors the dissenting opinion of Mr. Justice HOLMES, in the *Western Union* case, (216 U. S. 1) as being more in accord with fundamental principles. The book was written before the *Minnesota rate* decision was rendered (33 S. C. 729). The same rule, the author believes, would be applied to the intrastate business of a Federal Corporation, although he notes the dicta of the Court in several cases adopting the view of Mr. Justice SWAYNE, in the *Peniston* case (18 Wall. 5) that Congress has power to remove all the operations of a Federal Corporation from state regulation or taxation as the local business of the National Bank was exempted in the *Osborne* case (9 Wheat. 738).

A state can also impose a charge upon an interstate commerce corporation, Federal or State, for local government supervision, if a reasonable charge for services performed, or for the privilege of using the public highways, as by telegraph poles in the streets (*W. U. Tel. Co. v. New Hope*, 187 U. S. 419; *St. Louis v. W. U. Tel. Co.*, 148 U. S. 92).

Under the police power the states can exclude from entry into the state, such articles as are inherently dangerous to the health and safety of the people, if really necessary to do so,—certainly in the absence of conflicting Federal regulation; but as to other articles, the silence of Congress, is an indication that interstate commerce therein should be free; so too any burden upon a corporation engaged in interstate commerce, which in its opera-

tions materially burdens such commerce is invalid. And as to any producing function of such Federal Corporation, the states could admit or exclude or attach conditions the same as in the case of any State Corporation not engaged in interstate commerce.

As to suits against such Federal Corporation Congress could provide that only the Federal Courts should have jurisdiction, even with reference to any producing function conferred upon such corporation.

The last chapter is a valuable one as to the meaning of "Commerce among the States."

The author finds many points upon which the Supreme Court has not yet passed, but upon nearly every one something has been said, or some pretty definite analogy is to be found in some one of the more than two hundred cases,—nearly all from the United States Supreme Court—reviewed or referred to. And although, perhaps, many will not fully agree with all of his conclusions, yet all will find here a thoroughly excellent working out of the important questions that would arise from Federal incorporation of trading corporations. The book deals only with legal questions, and not at all with the economic or political problems such a policy raises. H. L. W.

COMMENTARIES ON THE LAW OF MASTER AND SERVANT. By C. B. Labatt, B.A. (Cantab) M.A. (Toronto), of the Bar of San Francisco, Cal. Second Edition. The Lawyer's Co-operative Publishing Co., Rochester, New York, 1913. 8 Vols. pp. ccv, 10090.

From BLACKSTONE's chapter of 11 small pages written 150 years ago, summing up the results of 700 years' growth of the English law of Master and Servant, to this monumental work, is a long period, if measured in the pages needed to treat this topic. At the same rate, 63 years to the page, we have in the last 150 years, traveled 63000 years beyond BLACKSTONE, or, in other words, we are 90 times as far away from his time, as he was from the Norman Conquest. He wrote at the very beginning of the modern industrial system, before the steam engine, the factory system, the railroad, or the development of the modern sciences underlying our application of machinery to industry. When he wrote, Master and Servant was for the most part one of the Domestic Relations, as he treated it, and had been so for thousands of years; but now it has become a contract relation extending to every situation in which one person undertakes to work for another under or subject to the latter's control, and these volumes forcibly call attention to the almost infinite complexity of our modern industrial life.

This work treats this relation in almost every conceivable detail except "the hiring of seamen and persons in public employments." There are eight volumes, 126 chapters, 10090 pages, with many additional ones as 8944, 8944a to 8944yy, including such as 8944kk-1 to 18. There are also 2793 sections with many numbers duplicated by a, b, &c. The table of contents contains 205 pages; the table of cases 718 pages, and the index 445. Every facility is therefore employed to make the material available. It is evident that